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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OMAR MASRY, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

ABBOTT LABORATORIES,

Defendant.

Case No. 5:23-cv-04348-NW

Compl. Filed: August 24, 2023

FAC Filed: December 22, 2023

Assigned to Hon. Noël Wise

**PLAINTIFF OMAR MASRY'S NOTICE
OF MOTION AND MOTION FOR CLASS
CERTIFICATION; OMNIBUS
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF CLASS
CERTIFICATION AND IN OPPOSITION
TO DEFENDANT'S MOTION TO DENY
CLASS CERTIFICATION**

Date: March 25, 2026

Time: 9:00 a.m.

Courtroom: 3 – 5th Floor

REDACTED—PUBLICLY FILED

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on March 25, 2026 at 9:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 3 of the Honorable Noël Wise, of the United States District Court for the Northern District of California, located at 280 South 1st Street, San Jose, CA 95113, Plaintiff Omar Masry (“Plaintiff”), on behalf of himself and all other similarly situated consumers, by and through his counsel of record, Clarkson Law Firm, P.C., will and hereby does move this Court for class certification pursuant to Fed. R. Civ. P. 23(b)(3).

Plaintiff moves this Honorable Court for an Order as follows:

1. That this case is certified to proceed to the merits as a class action pursuant to Fed. R. Civ. P. 23(b)(3) on all causes of action set forth in Plaintiff’s First Amended Class Action Complaint filed against Defendant Abbott Laboratories (“Defendant”) on behalf of the following Class:

All residents of California who, within four years prior to the filing of the Complaint (the “Class Period,” which is August 24, 2019 to the present), purchased Glucerna shakes labeled with the statement “help manage blood sugar” for personal use and not for resale.

(the “Class”).

2. That Plaintiff Omar Masry be appointed as Class Representative.

3. That Shireen M. Clarkson, Bahar Sodaify, and Alan Gudino of Clarkson Law Firm, P.C., be appointed as Class Counsel pursuant to Fed. R. Civ. P. 23(g).

This motion is based upon this notice of motion, the concurrently filed memorandum of points and authorities, declarations, exhibits, and evidence submitted in support thereof, any written or oral arguments or evidence submitted in connection therewith, all relevant papers on file in this action, and upon such further arguments and evidence as may be presented in connection with the hearing of this matter.

Dated: August 12, 2025

CLARKSON LAW FIRM, P.C.

By: /s/ Alan Gudino

Shireen M. Clarkson

Bahar Sodaify

Alan Gudino

Attorneys for Plaintiff

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Abbreviation	Document	Declarant/Deponent/Expert
ECF No. 24	First Amended Class Action Complaint (“FAC”)	Plaintiff Omar Masry (“Plaintiff”)
ECF No. 77	Defendant’s Motion to Deny Class Certification	Defendant Abbott Laboratories (“Defendant”)
Gudino Decl.	Declaration of Alan Gudino in Support of Plaintiff’s Omnibus Motion for Class Certification and in Opposition to Defendant’s Motion to Deny Class Certification	Plaintiff’s Counsel
Gudino Decl., Ex. 1	Defendant’s Responses and Objections to Plaintiff’s Requests For Admission, Set One, dated August 12, 2024	Defendant
Gudino Decl., Ex. 2	Defendant’s “2025 Business Planning Guide—Brand Strategy” (ABBOTT_016781)	Defendant
Gudino Decl., Ex. 3	Labels for Glucerna Original, Snack Shake, Hunger Smart, Protein Smart	Defendant
Gudino Decl., Ex. 4	Defendant’s “Glucerna: Blood Sugar Management” market insights (ABBOTT_015929)	Defendant
Gudino Decl., Ex. 5	Defendant’s “2025 Business Planning Guide” (ABBOTT_016781)	Defendant
Gudino Decl., Ex. 6	Defendant’s “Therapeutic Brand Planning Day” presentation (ABBOTT_015731)	Defendant
Gudino Decl., Ex. 7	Defendant’s “Glucerna Claims Research” (ABBOTT_000198)	Defendant
Gudino Decl., Ex. 8	Defendant’s “2019 Q2 Tracking Summary” research (ABBOTT_000083)	Defendant

Gudino Decl., Ex. 9	Deposition Transcript of Paul Nichols	Defendant
Gudino Decl., Ex. 10	Deposition Transcript of Omar Masry	Plaintiff
Gudino Decl., Ex. 11	Firm Resume of Clarkson Law Firm, P.C.	Plaintiff's Counsel
Masry Decl.	Declaration of Plaintiff Omar Masry	Plaintiff
Weir Decl.	Declaration of Colin B. Weir	Plaintiff's Economics Expert
Gaskin Decl.	Declaration of Steven P. Gaskin	Plaintiff's Conjoint Survey Expert
Sen Decl.	Declaration of Dr. Sabyasachi Sen	Plaintiff's Science Expert

I. INTRODUCTION

Defendant Abbott Laboratories labels and advertises its Glucerna shakes with a clear promise: they “help manage blood sugar.” This claim is pivotal to the products’ appeal, speaking directly to not only consumers living with diabetes or prediabetes, but also to the tens of millions of Americans who are health-conscious, at risk for metabolic conditions, or simply seeking better blood sugar control for overall wellbeing. The claim signals safety, efficacy, and a proactive tool for managing and improving metabolic health.

But the promise is false. Glucerna’s key ingredient, the non-nutritive sweetener sucralose, does not help manage blood sugar. Instead, it impairs insulin response, exacerbates insulin resistance, and is associated with an increased risk of developing diabetes. Plaintiff’s endocrinology expert, Dr. Sabyasachi Sen, will testify that sucralose worsens insulin resistance and metabolic dysfunction. That’s why leading public health authorities—including the World Health Organization—have also explicitly warned against using non-sugar sweeteners like sucralose for glycemic control or chronic disease prevention.

Despite the science, Abbott continues to feature “help manage blood sugar” on the front of its shakes because it drives sales. Internal documents confirm that this claim ranked ██████████ ██████████ tested with consumers, leading Defendant to conclude that blood sugar management is highly material to purchase decision-making. Defendant’s marketing plans reflect targeting the public at large with ██████████ Defendant uses the claim strategically to set Glucerna apart from the competition, prioritizing profit over the truth.

Plaintiff Omar Masry and Class members purchased Glucerna shakes in reliance on this uniform front-label claim and paid a premium for a product that does not deliver the promised benefit. The deception and harm are uniform, reflecting the precise circumstances Rule 23 was designed to address. Rather than allowing the certification process to proceed in due course, Defendant months ago attempted to block it with a premature “motion to deny class certification.” Nothing in that improper attempt undermines certification. The record demonstrates Plaintiff’s adequacy: his experience is representative, his interests are aligned with those of the Class, and he

1 is committed to vigorously prosecuting this action on behalf of all consumers. Plaintiff's counsel is
 2 likewise well-qualified to represent the Class, with no conflicts and a strong record of success in
 3 complex consumer class actions.

4 All other Rule 23 requirements are satisfied as well. The Class is sufficiently numerous, as
 5 demonstrated by significant sales volume. Common questions of law and fact, including whether
 6 the representation is false, material, and likely to deceive reasonable consumers, predominate over
 7 any individualized issues due to Defendant's uniform labeling. Typicality is satisfied because
 8 Plaintiff purchased the shakes during the Class Period in reliance on the same deceptive
 9 representation made to all Class members.

10 Plaintiff's experts will also demonstrate, through established methodologies, that the price
 11 premium paid for Glucerna shakes is attributable to the "help manage blood sugar" claim. Survey
 12 expert Steven P. Gaskin will quantify consumer reliance on the false promise, while economist Colin
 13 B. Weir will use that data to calculate damages on a classwide basis.

14 Like other class members, Plaintiff saw and relied on Defendant's uniform front-label claim
 15 that Glucerna shakes "help manage blood sugar," paid a premium based on that representation, and
 16 received a Product that disrupts blood sugar regulation and endangers metabolic health. Defendant
 17 made this same core misrepresentation to every purchaser, forming a proper basis for class-wide
 18 relief and certification. Plaintiff respectfully requests that the Court grant his motion for class
 19 certification and deny Defendant's motion to deny class certification.

20 **II. COMMON FACTS AND EVIDENCE SUPPORTING CLASS CERTIFICATION**

21 **A. Defendant's "Help Manage Blood Sugar" Claim Appeared Uniformly on the** 22 **Products' Front Label During the Class Period**

23 Throughout the Class Period¹, Defendant engaged in a deliberate, uniform campaign to
 24 market and sell its Glucerna shakes, including the Original Shake, Hunger Smart Shake, Protein
 25 Smart Shake, and Original Snack Shake (collectively, the "Products"), by prominently featuring the
 26 health-focused promise that the Products "help manage blood sugar." ECF No. 24 ¶¶ 9, 14; Gudino
 27 Decl., Ex. 3 (Glucerna shakes labels). This representation appeared on the front panel of every
 28

¹ The "Class Period" is August 24, 2019 through the present. ECF No. 24 ¶ 77.
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Product, regardless of flavor, size, or format. *Id.* Defendant has used this uniform front-label claim across all retail packaging nationwide, including throughout California, so that every Class member encountered the same deceptive message before buying the Products. *See* Gudino Decl., Ex. 9, Nichols Dep. at 65:24–66:4; 86:8-15; 94:24–95:4; 101:13-18; 102:1-4; 102:18-21; 102:24–103:3. Defendant’s campaign did not stop at the label. Defendant reinforced this health message through a long-running, widespread advertising campaign designed to cement Glucerna’s reputation as a solution for blood sugar management and as the product of choice for people with diabetes, at risk for diabetes, or concerned about their blood sugar. *See Id.* at 63:7-14; 65:17-22; 85:14–86:4; 94:9-23; 109:2-5, 16-5; 110:1-2, 8-10, 15-16. Through this effort, Defendant ensured that the false and misleading representation reached consumers everywhere and guaranteed class-wide exposure to the same uniform deception.

B. Defendant’s Internal Documents Further Confirm That Blood Sugar Management Claims Are Material and Drive Consumer Purchases

Defendant’s own evidence confirms that its “help manage blood sugar” claim is material to all consumers, not just those diagnosed with diabetes. For example, internal data reveal that [REDACTED] Gudino Decl., Ex. 4 at ABBOTT_015929. Defendant’s Senior Director of Insights and Analytics, Paul Nichols, testified that [REDACTED] *Id.*, Ex. 9, Nichols Dep. at 125:8-22. Defendant refers to this broader trend as [REDACTED] (Id., Ex. 4 at ABBOTT_015929), and its 2025 business objectives even call for an [REDACTED] with [REDACTED] (Id., Ex. 5 at ABBOTT_016781). Defendant knows its blood sugar message resonates beyond the diabetic population, and it has intentionally built strategies to capitalize on that broad consumer appeal.

At the same time, Defendant recognizes that blood sugar management and diabetes remain urgent, widespread public health concerns that strongly influence purchasing behavior. Its internal documents emphasize the scale of the consumer base for its Products: [REDACTED]

1 [REDACTED] and [REDACTED]
 2 [REDACTED] *Id.*, Ex. 6 at ABBOTT_015731. Defendant further notes that obesity is [REDACTED]
 3 [REDACTED] affecting [REDACTED] and is [REDACTED] *Id.* Its 2025
 4 planning guide warns that [REDACTED]
 5 [REDACTED] *Id.*, Ex. 5
 6 at ABBOTT_016781. Defendant even tracks regional prevalence by noting [REDACTED]
 7 [REDACTED]
 8 [REDACTED] *Id.*, Ex. 6 at ABBOTT_015731.

9 Defendant's own claims research confirms that blood sugar management claims are material
 10 to consumers. *Id.*, Ex. 7 at ABBOTT_000198. Indeed, Defendant's stated purpose for its "Glucerna
 11 Claims Research" was to determine [REDACTED]
 12 [REDACTED]—i.e., to identify which claims are most material and persuasive. *Id.*, Ex. 7 at
 13 ABBOTT_000198. The results demonstrate that among Glucerna users, the top two claims out of
 14 37 tested were [REDACTED] and [REDACTED]
 15 [REDACTED]. *Id.*; see also *id.*, Ex. 8 at ABBOTT_000083 (noting that adult nutrition shake users
 16 associate Glucerna with [REDACTED]). Defendant's internal analysis concedes
 17 that [REDACTED] and even recognizes that [REDACTED]
 18 [REDACTED] *Id.*, Ex. 7 at
 19 ABBOTT_000198. In other words, Defendant knows that the concept of blood sugar management
 20 is overwhelmingly material to consumers regardless of how it is communicated. *See id.* As
 21 Defendant's documents further reveal, the [REDACTED] for
 22 consumers. *Id.*, Ex. 6 at ABBOTT_015731. In short, Defendant's internal research and sales analysis
 23 confirm that claims about blood sugar management are essential to consumer purchasing decisions
 24 and a key driver of Glucerna sales.

25 C. The Products Cannot Deliver the Promised Blood Sugar Management Benefit

26 Defendant's claim that the Products "help manage blood sugar" is directly contradicted by
 27 scientific and medical evidence. Sucralose has been shown to disrupt the body's ability to regulate
 28 blood sugar by impairing glucose metabolism through various mechanisms, including altering gut

1 microbiota, promoting inflammation, and increasing insulin resistance. *See* Declaration of Dr.
2 Sabyasachi Sen (“Sen Decl.”) ¶¶ 16, 19, 21-22, 27-29. Rather than supporting metabolic health, the
3 Products imbalance blood sugar levels that consumers seek to manage. *See id.*

4 Plaintiff’s expert, Dr. Sabyasachi Sen, a practicing endocrinologist and tenured professor of
5 medicine with over 20 years of experience in diabetes and metabolic research, has reviewed the
6 clinical and scientific literature, as well as his own laboratory studies. Dr. Sen concludes that
7 sucralose interferes directly with glucose and insulin pathways, promotes adipogenesis, and worsens
8 glycemic control. *See id.* ¶¶ 14-16, 19, 21-29 (explaining that sucralose elevates reactive oxygen
9 species (“ROS”), drives inflammation, disrupts gut microbiota, alters incretin and insulin secretion,
10 and shifts stem cell differentiation toward fat accumulation).

11 As Dr. Sen explains, sucralose increases the accumulation of ROS within cells, which leads
12 to both local and systemic inflammation. *Id.* ¶¶ 14, 19, 26-27. This inflammation, in turn, drives the
13 development of insulin resistance—the first stage in the progression toward metabolic syndrome,
14 prediabetes, and ultimately Type 2 diabetes. *Id.* ¶¶ 16, 19, 27. Dr. Sen’s research, including studies
15 on human adipose-derived mesenchymal stromal cells, shows that even small doses of sucralose, at
16 concentrations comparable to or lower than those plausibly reached in the bloodstream after
17 consuming Glucerna shakes, rapidly elevate ROS levels and enhance fat cell formation
18 (adipogenesis). *Id.* ¶¶ 14-15 [REDACTED]

19 [REDACTED] study used 0.2 mM sucralose, a physiologic dose within the range achievable by high
20 NNS consumers), 25–28 (low-dose sucralose exposure caused ROS accumulation within 72 hours,
21 promoted adipogenesis, and shifted stem cell differentiation toward fat tissue). Both ROS
22 accumulation and adipogenesis are known to impair insulin signaling and worsen metabolic health.

23 Moreover, Dr. Sen notes that sucralose disrupts the gut microbiome by altering gut pH and
24 killing beneficial bacteria, which impairs nutrient absorption and worsens systemic insulin
25 signaling. *Id.* ¶ 22 (gut flora disruption alters glucose metabolism and promotes inflammation).
26 These changes further destabilize glucose regulation, increase sugar cravings, and promote weight
27 gain. *Id.* ¶¶ 22 (gut changes lead to cravings and obesity), 23 (susceptible individuals gain weight
28 and increase inflammation after sucralose consumption). These harmful effects are observed even

1 in individuals who are not yet diabetic, demonstrating the general metabolic disturbance induced by
 2 sucralose. *Id.* ¶ 25. Based on this extensive scientific record, Dr. Sen concludes that the
 3 representation that the Products “help manage blood sugar” is medically and scientifically
 4 indefensible. *Id.* ¶ 29 (sucralose alters absorption, worsens glycemic control, and increases risk of
 5 obesity, prediabetes, and Type 2 diabetes).

6 These findings are consistent with public health guidance. In 2023, the World Health
 7 Organization (WHO) issued a report advising against the use of non-sugar sweeteners, including
 8 sucralose, for weight control or prevention of noncommunicable diseases such as diabetes due to
 9 insufficient evidence of their benefit and growing concerns over long-term harms. *See* ECF No. 24
 10 ¶ 46. WHO concluded that “replacing free sugars with non-sugar sweeteners does not help with
 11 weight control in the long term” and that their use may have “potential undesirable effects . . . such
 12 as an increased risk of type 2 diabetes, cardiovascular diseases, and mortality [.]”²

13 Because Glucerna shakes contain an ingredient known to disrupt blood sugar and increase
 14 the risk of metabolic disease, they cannot credibly be marketed as supporting blood sugar
 15 management. The claim misleads consumers into the very harm they seek to avoid.

16 **III. LEGAL STANDARD**

17 Courts recognize that consumer protection claims are ideal for class treatment and that any
 18 doubt as to the propriety of certification should be resolved in favor of certification. *Harris v. Palm*
 19 *Springs Alpine Ests., Inc.*, 329 F.2d 909, 913 (9th Cir. 1964). Under Rule 23, “[a] class action may
 20 be maintained’ if two conditions are met: The suit must satisfy the criteria set forth in subdivision
 21 (a) (i.e., numerosity, commonality, typicality, and adequacy of representation), and it also must fit
 22 into one of the three categories described in subdivision (b).” *Shady Grove Orthopedic Assocs., P.A.*
 23 *v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Rule 23(b)(3) allows certification where common
 24 questions of law or fact predominate over individual ones and where “a class action is superior to
 25 other available methods.” Fed. R. Civ. P. 23(b)(3). Pertinent factors in this determination include,

27 ² World Health Organization, *WHO Advises Not to Use Non-Sugar Sweeteners for Weight Control*
 28 *in Newly Released Guideline* (May 15, 2023), <https://www.who.int/news/item/15-05-2023-who-advises-not-to-use-non-sugar-sweeteners-for-weight-control-in-newly-released-guideline>; ECF
 No. 24 ¶ 7 n.6.

(A) the class members' interests in individually controlling the action, (B) whether any litigation concerning the controversy has already begun, (C) the desirability of concentrating the litigation in the forum, and (D) the difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D). As discussed below, each requirement set forth under Rule 23(a) and (b)(3) is satisfied warranting certification of the Class.

IV. ARGUMENT

A. The Class Is Adequately Defined

While no ascertainability requirement exists in the Ninth Circuit, a class must still be adequately defined. *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124, n.4 (9th Cir. 2017); *Wolph v. Acer Am. Corp.*, 272 F.R.D. 477, 482 (N.D. Cal. 2011) ("The class definition must be sufficiently definite so that it is administratively feasible to determine whether a particular person is a class member."). A class is adequately defined where objective criteria can be applied to determine eligibility as a class member. *Forcellati v. Hyland's, Inc.*, 2014 WL 1410264, at *5 (C.D. Cal. Apr. 9, 2014).

The Class here is well-defined as: All residents of California who, within four years prior to the filing of the Complaint (the "Class Period," which is August 24, 2019 to the present), purchased Glucerna shakes labeled with the statement "help manage blood sugar" for personal use and not for resale. The Class is objectively and sufficiently definite. It "identifies purchasers of Defendant's products that included the material misrepresentation. Because the alleged misrepresentation appeared on the actual packages of the products purchased, there is no concern that the class includes individuals who were not exposed to the misrepresentation." *Astiana v. Kashi Co.*, 291 F.R.D. 493, 500 (S.D. Cal. 2013); *Forcellati*, 2014 WL 1410264, at *5 ("Here, Plaintiffs have precisely defined their class based on an objective criterion: purchase of Defendants' . . . products within a prescribed time frame. This is enough to satisfy Rule 23(a)'s implied ascertainability requirement.").

Moreover, "[t]here is no requirement that 'the identity of the class members . . . be known at the time of certification.'" *Astiana*, 291 F.R.D. at 500. So long as the class definition is sufficiently definite to identify putative members, as it is here, any "challenges entailed in the administration of this class are not so burdensome as to defeat certification." *Id.*; see also *Lilly v. Jamba Juice Co.*,

308 F.R.D. 231, 238 (N.D. Cal. 2014) (“Few people retain receipts for low-priced goods . . . Yet it is precisely in circumstances like these, where the injury to any individual consumer is small, but the cumulative injury to consumers as a group is substantial, that the class action mechanism provides one of its most important social benefits. In the absence of a class action, the injury would go unredressed.”). Here, Class members can be identified based on objective criteria, such as the product purchased and the date and location of purchase. Even without documentary proof, Class members may self-identify by declaring under oath that they purchased the Products during the Class Period. *McCrary v. Elations Co., LLC*, No. EDCV 13-00242 JGB (OPx), 2014 WL 1779243, at * 7 (C.D. Cal. Jan. 13, 2014).

B. The Rule 23(a) Criteria Are Satisfied

1. Numerosity

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable[.]” Fed. R. Civ. P. 23(a)(1); *Harris*, 329 F.2d at 913 n.6. “Impracticability does not mean impossibility,” but rather asks the court to assess the difficulty or inconvenience of joining all members of the class. *Harris*, 329 F.2d at 913-14. No cutoff number exists to determine numerosity, but courts have consistently held that joinder is impracticable where the class is composed of more than 40 persons. *Keegan v. Am. Honda Motor Co., Inc.*, 284 F.R.D. 504, 522 (C.D. Cal. 2012).

Numerosity is undisputed. Defendant admits that each of the products has been purchased by at least 40 people for personal use and not for resale during the class period. *See* Gudino Decl., Ex. 1 (Def.’s Resp. to Pl.’s RFA No. 18); *Rannis v. Recchia*, 380 F. App’x 646, 650-51 (9th Cir. 2010) (numerosity requirement satisfied when class includes at least 40 members). This admission alone satisfies numerosity.

Numerosity is further supported by Defendant’s product sales in 2024, which were estimated at [REDACTED]. Gudino Decl., Ex. 2; *see also Capaci v. Sports Rsch. Corp.*, No. CV 19-3440 FMO (FFMx), 2022 WL 1133818, at *5 (C.D. Cal. Apr. 14, 2022) (numerosity satisfied based on wholesale sales data where “common sense” indicated retailers sold enough units to support a class of at least 40 members). The precise number of class members is not required at this stage; it is

1 enough that the available data supports a common-sense inference that the class is sufficiently
 2 numerous.

3 2. Commonality

4 Commonality requires the existence of “questions of law or fact common to the class” and is
 5 construed liberally and permissively. Fed. R. Civ. P. 23(a)(2); *Jordan v. L.A. County*, 669 F.2d 1311,
 6 1320 (9th Cir. 1982); *Young v. Neurobrands, LLC*, No. 18-cv-05907-JSW, 2020 WL 11762212, at
 7 *3 (N.D. Cal. Oct. 15, 2020). Notably, even “a single [common] question’ will do.” *Wal-Mart*
 8 *Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (citation omitted). The class’s “claims must depend
 9 upon a common contention . . . [and] . . . must be of such a nature that it is capable of class-wide
 10 resolution—which means that determination of its truth or falsity will resolve an issue that is central
 11 to the validity of each one of the claims in one stroke.” *Id.* at 350. As the Ninth Circuit explained:
 12 “All questions of fact and law need not be common to satisfy the rule. The existence of shared legal
 13 issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled
 14 with disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th
 15 Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc.*, 564 U.S. at 338.

16 In false advertising cases, “variation among class members in their motivation for purchasing
 17 the product, the factual circumstances behind their purchase, or the price that they paid does not
 18 defeat the relatively ‘minimal’ showing required to establish commonality.” *Astiana*, 291 F.R.D. at
 19 502. In fact, “it is an error of law for a court to inquire into the motives of each individual class
 20 member at the class certification stage.” *Testone v. Barlean’s Organic Oils, LLC*, No. 19-CV-169
 21 JLS (BGS), 2021 WL 4438391, at *4 (S.D. Cal. Sept. 28, 2021). And “[i]n determining whether the
 22 ‘common question’ prerequisite is met, a district court is limited to resolving whether the evidence
 23 establishes that a common question is capable of class-wide resolution, not whether the evidence in
 24 fact establishes that plaintiffs would win at trial.” *Olean Wholesale Grocery Coop., Inc. v. Bumble*
 25 *Bee Foods LLC*, 31 F.4th 651, 666-67 (9th Cir. 2022).

26 Importantly, in false advertising cases, courts routinely find that commonality has been
 27 satisfied based on the question of whether the label would be deceptive to a reasonable consumer.
 28 *Hilsley v. Ocean Spray Cranberries Inc.*, No. 17cv2335-GPC(MDD), 2018 WL 6300479, at *4

(S.D. Cal. Nov. 29, 2018) (citing cases); *see also Broomfield v. Craft Brew All., Inc.*, No. 17-cv-01027-BLF, 2018 WL 4952519, at *5 (N.D. Cal. Sept. 25, 2018) (“Numerous courts have recognized that a claim concerning alleged misrepresentations on packaging to which all consumers were exposed is sufficient to satisfy the commonality requirement because it raises the common question of whether the packaging would mislead a reasonable consumer.”); *Prescott v. Reckitt Benckiser LLC*, No. 20-cv-02101-BLF, 2022 WL 3018145, at *4 (N.D. Cal. July 29, 2022) (same).

Numerous common questions exist here. *See* ECF No. 24 ¶ 81 (listing common questions). These questions satisfy commonality because an answer to these questions—for instance, whether Defendant’s representation that the Products “help manage blood sugar” deceive reasonable consumers—will resolve “in one stroke” an issue that is central to the validity of each Class member’s claims under California’s consumer protection laws. *Fitzhenry-Russell v. Dr. Pepper Snapple Grp., Inc.*, 326 F.R.D. 592, 607-08 (N.D. Cal. 2018) (citing cases reasoning “Plaintiffs argue that the common question is: ‘was Defendant’s ‘Made From Real Ginger’ label likely to deceive reasonably consumers?’ In other consumer fraud cases in this district, courts have found similar common questions to be sufficient to satisfy commonality.”) (citations omitted); *see also Wal-Mart Stores, Inc.*, 564 U.S. at 359 (holding that even a single common question is sufficient).

Notably, the common questions here will be resolved by application of the same facts because Plaintiff and Class members all purchased and were exposed to the Products bearing the same misrepresentation. *See* Masry Decl. ¶ 3; *Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1099 (N.D. Cal. 2018) (citing *Zakaria v. Gerber*, No. LA CV15-00200 JAK (Ex), 2016 WL 6662723, at *8 (C.D. Cal. Mar. 23, 2016)) (“[C]ourts have repeatedly recognized that ‘[w]here the alleged misrepresentation appears on the label or packaging of each item being sold, class-wide exposure to it may be inferred.’”); *In re ConAgra Foods, Inc.*, 302 F.R.D. 537, 569 (C.D. Cal. 2014) (“Because all class members were exposed to the statement and purchased [the] products, there is ‘a common core of salient facts.’”); *Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411- YGR, 2016 WL 3844334, at *4-5 (N.D. Cal. July 15, 2016) (finding “sufficient common questions of fact and law” when “[t]he central question here is whether [defendant’s] labels were likely to deceive a

reasonable consumer.”); *Milan v. Clif Bar & Co.*, 340 F.R.D. 591, 598 (N.D. Cal. 2021) (finding commonality where “the main liability question ... is the same: were the challenged statements likely to mislead an objectively reasonable consumer.”). The “help manage blood sugar” claim is featured on the front of every Product label throughout the Class Period (*see* Gudino Decl., Ex. 3), and Plaintiff can prove through common scientific evidence that the claim is false. Commonality is therefore satisfied.

3. Typicality

Typicality and commonality are often considered together because they “tend to merge” and “serve as guideposts for determining whether . . . the named plaintiff’s claim and the class claims are so inter-related that the interests of the class members will be fairly and adequately protected in their absence.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157, n.13 (1982). Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class[.]” Fed. R. Civ. P. 23(a)(3). In the Ninth Circuit, typicality is satisfied if “the unnamed class members have injuries similar to those of the named plaintiffs and the injuries result from the same, injurious course of conduct.” *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001), *abrogated on other grounds by Johnson v. Cal.*, 543 U.S. 499 (2005). However, “[t]ypicality does not mean that the claims of the class representatives must be identical or substantially identical to those of absent class members.” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Rather, they need only be “reasonably co-extensive with those of absent class members[.]” *Hanlon*, 150 F.3d at 1020. And notably, “[t]ypicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (cleaned up).

Courts find typicality in cases where defendants utilize “sufficiently similar” labeling claims or omissions. *See, e.g., Beck-Ellman v. Kaz USA*, 283 F.R.D. 558, 566 (S.D. Cal. 2012) (certifying claims on behalf of all models in “heating pad” product line where all “heating pads contain[ed] similar omission[s]” and were “sufficiently similar”). Thus, Plaintiff may represent all members of the Class, regardless of which Product variety they purchased. *In re TFT-LCD (Flat Panel) Antitrust*

1 *Litig.*, 267 F.R.D. 583, 593 (N.D. Cal. Mar. 28, 2010) (“The typicality requirement does not mandate
2 that the products purchased . . . must be the same as those of absent class members.”).

3 Typicality, like commonality, is satisfied here because Plaintiff and the Class all purchased
4 the Products bearing the same material and deceptive “help manage blood sugar” claim. *See* Masry
5 Decl. ¶ 3. Plaintiff purchased the Products relying on Defendant’s representation “help manage
6 blood sugar,” believing this claim to be true. *Id.* Plaintiff’s purchasing decision and willingness to
7 pay more for the Products were directly influenced by his reliance on this representation. *Id.* No
8 more is required to satisfy typicality. *See, e.g., Broomfield*, 2018 WL 4952519, at *5-6 (finding
9 typicality satisfied where plaintiffs relied on deceptive representations causing them to pay more for
10 products); *Sinatro v. Barilla Am., Inc.*, No. 22-cv-03460-DMR, 2024 WL 2750018, at *9 (N.D. Cal.
11 May 28, 2024) (typicality satisfied where plaintiffs sought relief for products purchased in reliance
12 on allegedly false and misleading labels); *Johns v. Bayer Corp.*, 280 F.R.D. 551, 557 (S.D. Cal.
13 2012) (typicality satisfied where plaintiffs and class were exposed to the same misrepresentations).

14 Months before class certification was properly at issue, Defendant filed a “motion to deny
15 class certification.” *See generally* ECF No. 77. The Court declined to hear it, noting the arguments
16 could be considered at the proper time. *See* ECF No. 80. Defendant’s motion raised four arguments
17 challenging Plaintiff’s typicality and adequacy. As explained below, none have merit.

18 *i. Plaintiff Relied on the “Help Manage Blood Sugar” Claim*

19 Defendant argues that Plaintiff is atypical because he relied on the “help manage blood sugar”
20 claim rather than the adjacent phrase “made with CarbSteady.” ECF No. 77 at 5–6. This argument
21 fails for at least two reasons. First, courts recognize that consumers are not expected to parse labels
22 with legal precision; instead, the inquiry centers on the overall message the label communicates. *See*
23 *FTC v. Braswell*, No. CV 03-3700 DT (PJWx), 2005 WL 4227194, at *5 (C.D. Cal. Sept. 26, 2005)
24 (rejecting motion for summary judgment when “the net impression of the [challenged]
25 representations [were] such that the representations would be likely to mislead reasonable
26 consumers.”).

27 Second, Defendant’s own internal documents demonstrate that “help manage blood sugar”
28 has been tested as a standalone marketing message, distinct from “CarbSteady.” *See* Gudino Decl.,

1 Ex. 7 at ABBOTT_000198. In fact, Defendant’s consumer testing ranked [REDACTED]
2 [REDACTED]
3 [REDACTED]—underscoring
4 that consumers do not view the two claims together or the same. *Id.* Indeed, Plaintiff, like other
5 reasonable consumers, does not know what “CarbSteady” even means, making it implausible that it
6 somehow conditions or limits the far more understandable blood sugar claim. Gudino Decl., Ex. 10,
7 Masry Dep. at 122:9-11 (“A. I didn’t rely on CARBSTEADY portion. I didn’t understand what that
8 meant. I relied on the phrase ‘help manage blood sugar.’”).

9 Plaintiff acted just as a reasonable consumer would. He testified that the “help manage blood
10 sugar” claim was the main reason for his Product purchases and that he specifically noticed and
11 relied on this front-label statement in making his purchasing decision. *See* Gudino Decl., Ex. 10,
12 Masry Dep. at 123:4-10 (“Q. And that it helps manage blood sugar? A. Yes. Q. And you read that
13 claim? A. Yes. Q. And you relied on that claim in purchasing the product? A. Yes.”). Plaintiff was
14 not confused about what “help manage blood sugar” meant or what claim he was relying on; he
15 confirmed this during his deposition, and that this representation was material to his purchase
16 decision.

17 Defendant’s contention that Plaintiff “cherry-picked” a portion of the Product label ignores
18 the reality of how consumers interact with product packaging. As this Court has already recognized,
19 a reasonable consumer could interpret the “help manage blood sugar” statement displayed on the
20 front of Glucerna’s packaging as representing that the Products provide blood sugar management
21 benefits, not just in comparison to other foods, but in a more general sense. ECF No. 42 at 6
22 (“[P]laintiffs have plausibly alleged that a reasonable consumer might understand Glucerna labels
23 in full context to claim that the products can help manage blood sugar and diabetes generally, not
24 just in comparison to foods with high glycemic carbohydrates”). Nothing about Plaintiff’s testimony
25 or reliance undermines that conclusion.

26 Consumers are not required to investigate vague, proprietary terms like “CarbSteady”—
27 particularly when they did not rely on them. Plaintiff testified that he relied on the Products’ “help
28 manage blood sugar” claim, was persuaded by their advertised “benefits for regulating blood sugar

1 and for reducing possibility of diabetes,” and believed the claim meant the Product “helped manage
2 blood sugar.” Gudino Decl., Ex. 10, Masry Dep. at 104:6-8, 122:9-11, 130:7. He did not rely on or
3 even understand the “CARBSTEADY” portion of the label, which he is not challenging, and the
4 law does not require consumers to investigate proprietary terms, especially when the consumer did
5 not rely on that claim. *See Leyman v. Kroger Co.*, No. 3:24-CV-01001-L-VET, 2025 WL 2051202,
6 at *3 (S.D. Cal. July 22, 2025) (“If the front label is misleading, then ‘reasonable consumers should
7 [not] be expected to look beyond misleading representations on the front of the box to discover the
8 truth from the ingredient list in small print on the [*7] side of the box,’” (quoting *Williams v.*
9 *Gerber Prods. Co.*, 552 F.3d 934, 939 (9th Cir. 2008))).

10 While *McGinity v. Procter & Gamble Co.*, 69 F.4th 1093 (9th Cir. 2023), holds that back-
11 label review may be appropriate where the front label itself is ambiguous, that rule does not apply
12 here. The “help manage blood sugar” claim is clear and unambiguous. Moreover, Defendant’s own
13 research confirms that this is the message that resonates most with consumers—not an obscure,
14 undefined reference to “CarbSteady,” which carries no commonly understood meaning and would
15 not be readily interpreted by the average consumer. *See also* Gudino Decl., Ex. 7 at
16 ABBOTT_000198 [REDACTED]
17 [REDACTED]); Ex. 6 at ABBOTT_015731
18 [REDACTED].

19 Even if a consumer did look to the inconspicuous disclaimer buried in the side or back label
20 (i.e., “Designed to help minimize blood sugar spikes in people with diabetes compared to high
21 glycemic carbohydrates”) it would not dispel the deception. That “disclaimer” reinforces the
22 impression that the Products help with blood sugar management, and as the Court has already
23 recognized, “even assuming consumers read this clarification, the Court cannot conclude . . . that a
24 reasonable consumer would necessarily understand the side-label clarification to limit the scope of
25 the front label’s blood sugar claims in the way that Abbott suggests.” ECF No. 42 at 7. Defendant’s
26 suggestion that a reasonable consumer would have researched technical language, focus on fine
27 print cross-referenced by a dagger symbol next to clear language, or otherwise look beyond the clear
28 front-label promise is contrary to the law and common sense.

1 Defendant's reliance on *Weiss v. Trader Joe's Co.*, 838 F. App'x 302 (9th Cir. 2021) for the
2 proposition that a consumer cannot "cherry-pick" labeling claims is misplaced. There, in an
3 unpublished and non-precedential decision concerning bottled water, the Court affirmed a dismissal
4 after determining that no reasonable consumer would interpret "ionized to achieve the perfect
5 balance" to refer to *the consumer's internal pH*, including because the rest of the label made clear
6 it referred to the water's balance. *Id.* at 303. It also highlighted how the interpretation lacked
7 "common sense." *Id.* Here, by contrast, the "help manage blood sugar" claim is, on its own, a
8 representation the Court has already found plausibly misleading at the motion to dismiss stage. ECF
9 No. 42 at 5–6.

10 Equally distinguishable is *Whiteside v. Kimberly-Clark Corp.*, 108 F.4th 771 (9th Cir. 2024).
11 There, the Ninth Circuit held that an asterisked, front-label environmental claim was sufficiently
12 clarified by an explicit "70% by weight" qualifier directly adjacent to the challenged claim. *Id.* at
13 784-85. That is not the case here. Under the reasonable-consumer standard, the issue is not merely
14 whether Plaintiff personally noticed or relied on "Carbsteady," but whether the "help manage blood
15 sugar" claim itself was clear or whether a reasonable consumer would need to consult any additional
16 clarifying language. *See Salazar v. Target Corp.*, 83 Cal. App. 5th 571, 579 (2022) (what matters in
17 the reasonable consumer test "is how consumers actually behave—how they perceive advertising
18 and how they make decisions") (internal citations omitted). The "help manage blood sugar" claim
19 is neither ambiguous nor does it appear with a directly adjacent and unambiguous qualifier, and thus
20 cannot be "cured" in the manner found dispositive in *Whiteside*.

21 Ultimately, Plaintiff's reliance on the "help manage blood sugar" claim without regard to
22 ambiguous technical language or background qualifiers is typical, both of reasonable consumers and
23 of the Class he seeks to represent. Differences in whether some consumers noticed, relied on, or also
24 read other label information do not defeat typicality. *See, e.g., Sinatro v. Barilla Am., Inc.*, No. 22-
25 CV-03460-DMR, 2024 WL 2750018, at *9 (N.D. Cal. May 28, 2024), reconsideration denied, No.
26 22-CV-03460-DMR, 2024 WL 4008715 (N.D. Cal. Aug. 29, 2024) (rejecting argument that class
27 representatives were atypical because some class members may have read other label statements
28 and holding that "individual experience with a product is irrelevant because the injury under the

UCL, FAL, and CLRA is established by an objective test”). And where a plaintiff testifies to relying on an affirmative health message displayed on the front label, class certification is appropriate. *See, e.g., Timmins v. Walmart, Inc., Defendant.*, No. 2:24-CV-02960-DJC-JDP, 2025 WL 1580525, at *4 (E.D. Cal. June 4, 2025) (“[T]he reasonable consumer standard is evaluated from the perspective of the ordinary consumer within the larger population, who is not typically exceptionally acute or sophisticated or wary and suspicious of advertising claims.”) (cleaned up); *Brod v. Sioux Honey Ass’n, Co-op.*, 927 F. Supp. 2d 811, 828 (N.D. Cal. 2013) (same)).

ii. Lack of Proof of Purchase Does Not Present a Unique Defense

Defendant argues Plaintiff is atypical because he lacks receipts or other proof of purchase, but cites no authority that class representatives in consumer cases must retain receipts for everyday products like Glucerna shakes routinely bought at grocery and drugstores. Nor could it. Courts recognize that most consumers do not keep proof of purchase for inexpensive, frequently purchased food products, and therefore reject this type of objection at class certification. *See Pierce-Nunes v. Toshiba Am. Info. Sys., Inc.*, No. CV 14-7242-DMG (KSX), 2016 WL 5920345, at *4 (C.D. Cal. June 23, 2016) (holding that a plaintiff’s lack of purchase proof “will not put him in conflict with other class members”); *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 540 (N.D. Cal. 2012) (same). Far from being atypical, Plaintiff’s inability to produce receipts actually reflects the common experience of class members. He credibly testified to purchasing Glucerna during the class period and, like most consumers, simply did not retain receipts. Gudino Decl., Ex. 10, Masry Dep. at 147:10-12. This is not a unique defense and poses no barrier to typicality. *See also LeGrand v. Abbott Lab’ys*, No. 22-CV-05815-TSH, 2025 WL 2144836, at *5 (N.D. Cal. July 28, 2025) (recently rejecting Abbott’s similar “no receipt” argument because “receipts are not a prerequisite to a cognizable consumer class action”).

iii. Plaintiff’s Medical Status Is Irrelevant to Typicality

Defendant’s argument that Plaintiff is atypical because he is not diabetic or pre-diabetic misses the mark. The Class is defined not by medical diagnosis, but by exposure to and payment of a premium for the same deceptive “help manage blood sugar” claim. That claim is false for all

1 consumers, regardless of health status, because the Products do not deliver the promised benefit.
 2 Rule 23 requires no shared medical diagnosis, and Defendant cites no authority to the contrary.

3 Plaintiff is typical of the Class including because he was exposed to the same front-label
 4 misrepresentation, relied on it in making his purchase, and suffered the same economic injury as
 5 every other Class Member. Plaintiff is concerned about blood sugar, as reasonable consumers are,
 6 and he also has a family history of diabetes (Masry Decl. ¶ 3)—a demographic Defendant’s own
 7 internal documents identify as a key market for the Products (*see* Gudino Decl., Ex. 6 at
 8 ABBOTT_015731 (noting “[REDACTED]”
 9 [REDACTED]); Ex. 4 at ABBOTT_015929 (internal
 10 [REDACTED]
 11 [REDACTED].”); Ex. 9,
 12 Nichols Dep. at 115:14-15 (admitting [REDACTED]
 13 [REDACTED]); Ex. 4 at ABBOTT_015929, Ex. 5 at ABBOTT_016781
 14 (recognizing and pursuing [REDACTED]
 15 [REDACTED])). He purchased the Products
 16 based on the “help manage blood sugar” claim and was motivated by a desire to manage his blood
 17 sugar and reduce his risk of diabetes. Gudino Decl., Ex. 10, Masry Dep. at 104:6-8, 122:9-11, 130:7
 18 (testifying that he relied on the Products’ “help manage blood sugar” claim and was persuaded by
 19 the advertised “benefits for regulating blood sugar and for reducing possibility of diabetes,” because
 20 he believed the claim meant the Product “helped manage blood sugar”).

21 Requiring a class representative to have a diabetes diagnosis would also misunderstand the
 22 theory of Plaintiff’s claims—that management of blood sugar is an objectively material claim to all.
 23 Defendant’s own documents confirm this. *See* Gudino Decl., Ex. 4 at ABBOTT_015929
 24 (recognizing the [REDACTED] among all consumers). Rule 23 does not
 25 require class representatives to have an identical health profile to every class member; it simply
 26 requires exposure to the same material misrepresentation and the same type of injury. Both exist
 27 here. *See Broomfield*, 2018 WL 4952519, at *5.

1 Simply put, the Products’ appeal, and the materiality of the “help manage blood sugar” claim
 2 extends well beyond any specific diagnosis, as evidenced by Defendant’s own market research, sales
 3 data, and executive testimony.

4 *iv. Plaintiff’s Prior Litigation Does Not Render Him Atypical*

5 Attempting to undermine Plaintiff’s typicality, Defendant also launches a common defense
 6 tactic: labeling him a “serial litigant.” But this has no legal relevance to the typicality analysis. *See,*
 7 *e.g., Bruno v. Quten Research Inst., LLC*, 280 F.R.D. 524, 534 (C.D. Cal. 2011) (finding that a
 8 “serial plaintiff” is not a basis for finding that a plaintiff is atypical); *see also Chinitz v. NRT W.,*
 9 *Inc.*, No. 18-CV-06100-NC, 2019 WL 4142044, at *4 (N.D. Cal. Aug. 30, 2019) (“[B]eing a serial
 10 or professional plaintiff is generally not grounds for inadequacy.”). Nor does it have a basis in fact.
 11 Defendant offers no evidence (nor could it) that Plaintiff has filed another action involving the same
 12 or even similar legal theories, factual allegations, or subject matter as those at issue. There is no
 13 pattern of repeated, self-serving class action litigation related to false advertising, food labeling, or
 14 consumer protection claims. Nor is there any suggestion of a history of settling class claims for
 15 personal gain to the detriment of absent class members.

16 The authorities on which Defendant relies further highlight why its argument fails. In *Wuest*
 17 *v. My Pillow, Inc.*, No. 3:18-cv-03227-EMC, 2019 WL 3577176 (N.D. Cal. Aug. 6, 2019), the court
 18 denied class certification only after finding a plaintiff had a well-documented history of filing class
 19 actions under the very same statute, almost always settling for personal benefit without any class
 20 relief, and was thus uniquely subject to credibility and adequacy attacks that would predominate the
 21 litigation. Likewise, *Backus v. ConAgra Foods, Inc.*, No. C 16-00454 WHA, 2016 WL 7406505
 22 (N.D. Cal. Dec. 22, 2016), involved pursuing class actions (or any other actions) involving the same
 23 statute, factual predicates, or legal theories. Defendant cannot point to any prior case where Plaintiff
 24 pursued similar consumer fraud or food labeling claims, let alone did so to the detriment of a putative
 25 class, because none exist. The mere fact that a plaintiff has been involved in unrelated litigation is
 26 not grounds for defeating typicality or adequacy. *See Nevarez v. Forty Niners Football Co., LLC*,
 27 326 F.R.D. 562, 583 (N.D. Cal. 2018) (rejecting argument that plaintiff was an inadequate class
 28 representative for previously filing ADA cases). What matters is whether that litigation

1 demonstrates a pattern of unique vulnerabilities or personal motives that would distract from class-
2 wide issues. No such showing can be made here.

3 4. Adequacy

4 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the
5 interests of the class.” Fed. R. Civ. P. 23(a)(4). The Ninth Circuit has articulated two criteria for
6 determining legal adequacy: (1) whether the named plaintiffs and their counsel have any conflicts
7 of interest with other class members; and (2) whether they will prosecute the action vigorously on
8 behalf of the class. *See Hanlon*, 150 F.3d at 1020; *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970,
9 985 (9th Cir. 2011). As to the latter, “[t]he relevant inquiry is whether the plaintiffs maintain a
10 sufficient interest in, and nexus with, the class so as to ensure vigorous representation.” *In re Online*
11 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). Both criteria favor certification here.

12 First, Plaintiff interests and those of the Class members are aligned, and there are no conflicts
13 of interest. *See Masry Decl.* ¶ 7. Plaintiff purchased the Products, reasonably relying on Defendant’s
14 uniform labeling and advertising claim that the Products “help manage blood sugar” and believing
15 that the Products were appropriate for individuals managing diabetes or concerned about blood sugar
16 control. *Id.* ¶ 3. His individual claims and the claims of the Class arise from the same deceptive
17 conduct by Defendant, and Plaintiff seeks remedies that are equally applicable and beneficial to the
18 Class. *Id.* ¶¶ 3, 8.

19 Second, Plaintiff has demonstrated a strong commitment to this litigation, actively
20 participating to date and affirming his readiness to continue doing so following class certification—
21 including sitting for his deposition, responding to discovery, and testifying at trial, if necessary. *Id.*
22 ¶¶ 5, 6. Plaintiff has demonstrated his dedication to vigorously pursuing this action by staying
23 informed of case developments and responding diligently to discovery requests. *Id.* ¶ 6. Plaintiff
24 understands the nature of a class action and his duty to fairly and adequately represent the interests
25 of the Class. *Id.* ¶¶ 5, 6.

26 Plaintiff’s counsel are equally committed to pursuing this action in the best interests of the
27 Class and have no conflicts of interest. *Gudino Decl.* ¶ 4. When determining whether class counsel
28 is adequate, “a court may examine the attorneys’ professional qualifications, skill, experience, and

resources. The court may also look at the attorneys’ demonstrated performance in the suit itself.” *In re Emulex Corp. Sec. Litig.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) (citation omitted). Clarkson Law Firm, P.C. is a well-respected firm with extensive experience in complex and class action litigation, having successfully litigated numerous similar consumer protection class actions. Gudino Decl., Ex. 11. Class counsel also have the resources necessary to vigorously litigate this action. *Id.* ¶ 4.

Throughout this litigation, Plaintiff and his counsel have diligently safeguarded the interests of the Class. They successfully opposed Defendant’s motion to dismiss (*see* ECF No. 42) and have gathered extensive class-wide evidence supporting class certification. *Id.* This includes conducting a thorough pre-litigation investigation of Defendant’s labeling and advertising, serving comprehensive written discovery, resolving discovery disputes through detailed meet-and-confer efforts, and analyzing voluminous documents and discovery responses. *Id.* Additionally, Plaintiff’s counsel subpoenaed third-party records, engaged in mediation efforts, retained leading experts, deposed Defendant’s Rule 30(b)(6) corporate representatives, and skillfully managed the day-to-day aspects of the litigation. *Id.* Thus, the adequacy requirement has been fully satisfied.

V. THE REQUIREMENTS OF RULE 23(B)(3) ARE SATISFIED

Because common questions of law and fact lie at the core of this case, Rule 23(a)(2) is satisfied, triggering the Rule 23(b)(3) analysis on whether these questions predominate over individual ones. *Hanlon*, 150 F.3d at 1022 (“In contrast to Rule 23(a)(2), Rule 23(b)(3) focuses on the relationship between the common and individual issues.”). Under Rule 23(b)(3), “[a] class action may be maintained if . . . the court finds that questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to the other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Both requirements are satisfied here.

“The ‘predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 454 (2016) (quoting *Amchem*, 521 U.S. at 623). Evaluating predominance “begins . . . with the elements of the underlying cause[s] of action.” *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011). “When common questions present a significant aspect of the case and they can be

resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than an individual basis.” *Hanlon*, 150 F.3d at 1022 (quotation omitted). “Class actions in which a defendant’s uniform policies are challenged generally satisfy the predominance requirement of Rule 23(b)(3).” *Castro v. Paragon Indus., Inc.*, No. 1:19-cv-00755-DAD-SKO, 2020 WL 1984240, at *10 (E.D. Cal. Apr. 24, 2020) (citations omitted). Thus, “[i]n cases alleging misrepresentation, common issues predominate when plaintiffs are exposed to [a] common set of representations about a product.” *Schneider v. Chipotle Mexican Grill, Inc.*, 328 F.R.D. 520, 539-40 (N.D. Cal. 2018) (cleaned up). That is precisely the case here.

A. Class Claims Will Be Resolved Through Objective Standards and Common Evidence That Apply Class-Wide

1. California’s Consumer Protection Laws

Plaintiff’s California consumer protection claims are subject to uniform resolution: “[f]or purposes of class certification, the UCL, FAL, and CLRA are materially indistinguishable.” *Forcellati*, 2014 WL 1410264, at *9 (“Each statute allows Plaintiffs to establish the required elements of reliance, causation, and damages by proving that Defendants made what a reasonable person would consider a material misrepresentation.”). The determinations necessary to adjudicate the CLRA, FAL, and UCL are not made with regard to each class member, but under a single, objective, and common “reasonable consumer” standard. *Whiteside*, 108 F.4th at 777 (quoting *Williams*, 552 F.3d at 938). The “objective test renders claims under the UCL, FAL and CLRA ideal for class certification because they will not require the court to investigate class members’ individual interaction with the product.” *Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 480 (C.D. Cal. 2012). This is especially true where, as here, the “help manage blood sugar” claim is a uniform claim conveying a material health benefit.

A plaintiff must prove actual reliance under the CLRA; however, “reliance may be presumed as to the entire Class if [Defendant’s] misrepresentations were material.” *Martin v. Monsanto Co.*, No. ED CV 16-2168-JFW (SPx), 2017 WL 1115167, at *6 (C.D. Cal. Mar. 24, 2017); *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (“[A] presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material.”). Here, Plaintiff attests that he

1 read and relied upon Defendant’s “help manage blood sugar” claim and reasonably understood the
 2 claim to mean that the Products would be helpful for those generally concerned about their blood
 3 sugar health. Masry Decl. ¶ 3; ECF No. 24 ¶ 23. This representation was material to Plaintiff’s
 4 decision to purchase the Products. Had he known the Products did not and could not provide the
 5 advertised benefit, he would not have purchased the Products or would have paid significantly less.
 6 Masry Decl. ¶ 3.

7 “A representation is material . . . if a reasonable consumer would attach importance to it *or* if
 8 the maker of the representation knows or has reason to know that its recipient regards or is likely to
 9 regard the matter as important in determining his choice of action.” *Hinojos v. Kohl’s Corp.*, 718
 10 F.3d 1098, 1107 (9th Cir. 2013). Critically here, materiality is subject to common proof because it
 11 is “judged according to an objective standard and so ‘[t]he alleged misrepresentations and
 12 omissions, whether material or immaterial, would be so equally for all [consumers] composing the
 13 class.’” *Mullins v. Premier Nutrition*, No. 13-cv-01271-RS, 2016 WL 1535057, at *5 (N.D. Cal.
 14 Apr. 15, 2016) (quoting *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 459 (2013)).
 15 As a result of this objective test, Plaintiff’s “claims under the UCL, FAL, and CLRA [are] ideal for
 16 class certification because they will not require the court to investigate ‘class members’ individual
 17 interaction with the product.’” *Bradach v. Pharmavite, LLC*, 735 F. App’x. 251, 254-55 (9th Cir.
 18 2018).

19 While Plaintiff does not need to prove materiality at the class certification stage (*see Hadley*,
 20 324 F. Supp. 3d at 1115), the significance of the “help manage blood sugar” claim is evident. *See*
 21 *also Milan*, 340 F.R.D. at 599 (“Questions of materiality and reliance also do not defeat
 22 predominance.”). Defendant’s own conduct shows the “help manage blood sugar” claim is material
 23 as it is featured on the front label of each Product (*see Gudino Decl., Ex. 3*) and was consistent with
 24 Defendant’s broader efforts to market the Product to those concerned about their blood sugar health
 25 (*see Gudino Decl., Ex. 4 at ABBOTT_015929*). *See Kumar*, 2016 WL 3844334, at *8 (“Materiality
 26 can be shown by a third party’s, or defendant’s own, market research showing the importance of
 27 such representations to purchasers.”) (collecting cases).

28 Indeed, Defendant’s “

1 [REDACTED], [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]. Gudino Decl., Ex. 7 at ABBOTT_000198. Defendant's analysis concedes that "[REDACTED]
 5 [REDACTED]
 6 [REDACTED] *Id.* Defendant's [REDACTED]
 7 [REDACTED], which demonstrates
 8 the broad classwide reliance and interest in blood sugar management among the general population.
 9 *See* Gudino Decl., Ex. 4 at ABBOTT_015929. Defendant's [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]. Gudino Decl., Ex. 6 at ABBOTT_015731, Ex. 5 at ABBOTT_016781. Overall,
 13 Defendant's own market research, business strategy, and marketing campaign provide common
 14 evidence that the "help manage blood sugar" claim is material to consumers.

15 Plaintiff, like other reasonable consumers, attached great importance to this representation.
 16 Plaintiff relied on the "help manage blood sugar" claim when deciding to purchase the Products, as
 17 he believed the claim indicated the Products would be suitable for people generally concerned about
 18 their blood sugar. Masry Decl. ¶ 3; Gudino Decl., Ex. 10, Masry Dep. at 104:6-8, 122:9-11, 130:7
 19 (testifying he relied on the Products' "help manage blood sugar" claim, was persuaded by the
 20 advertised "benefits for regulating blood sugar and for reducing possibility of diabetes," and
 21 believed the claim meant the Product "helped manage blood sugar."). Had Plaintiff known that the
 22 Products have harmful effects on blood sugar and metabolic health, he would not have purchased
 23 the Products or would have paid less for them. *See id.* That reliance is foreseeable where health
 24 claims are involved, because consumers heavily value assurances relating to health, wellness, and
 25 disease prevention. *See Kumar*, 2016 WL 3844334, at *8; *see Kwikset Corp. v. Superior Court*, 246
 26 P.3d 877, 892 (Cal. 2011) ("Simply stated: labels matter. The marketing industry is based on the
 27 premise that labels matter, that consumers will choose one product over another similar product
 28 based on its label and various tangible and intangible qualities they may come to associate with a

1 particular source.”).

2 Additionally, because every Class member was exposed to the same “help manage blood
3 sugar” claim, the predominating common issues include whether Defendant’s representation about
4 the Products was false and misleading, and whether it was likely to deceive a reasonable consumer.
5 *See Johns*, 280 F.R.D. at 557. These are objective questions subject to common proof and not
6 dependent on individualized circumstances. *See Rodman v. Safeway, Inc.*, 2014 WL 988992, at *9
7 (N.D. Cal. Mar. 10, 2014) (“The scope and proper interpretation of the objective words of the
8 parties’ agreement is a common question that applies commonly to all members of the class, is an
9 issue whose resolution will drive resolution of the litigation, and will predominate over any
10 individualized issues.”).

11 In any event, because materiality is judged on the objective, reasonable consumer standard,
12 its determination is not only subject to common proof, but “is a question of fact to be determined at
13 a later stage.” *Johns*, 280 F.R.D. at 558-59. Therefore, materiality and reliance pose no hindrance
14 to certification of the Class.

15 Common questions also predominate as to the “unfair,” “unlawful,” and “fraudulent” prongs
16 of the UCL. Under the “unfair” prong of the UCL, “[t]he court must weigh the utility of the
17 defendant’s conduct against the gravity of the harm to the alleged victim” *Motors, Inc. v. Times*
18 *Mirror Co.*, 102 Cal. App. 3d 735, 740 (1980). Defendant’s efforts to persuade consumers to
19 purchase the Products, and the harm resulting from these purchases, are issues common to members
20 of the Class. Deceiving consumers with a false health claim provides no legitimate utility and
21 imposes serious risks to metabolic health. Similarly, under the “unlawful prong,” unlawful business
22 acts include “any practices forbidden by law[.]” *Rush v. Nutrex Research, Inc.*, No. C 12-01060 LB,
23 2012 WL 2196144, at *8 (N.D. Cal. June 13, 2012). Defendant’s breaches of the FAL, CLRA, and
24 other laws alleged herein are predicate violations supporting claims under the unlawful prong of the
25 UCL. *See Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008). Finally,
26 regarding the “fraudulent” prong, Plaintiff must establish that “members of the public are likely be
27 deceived” by Defendant’s misrepresentation, which is an objective test subject to common proof, as
28

described above. *See Williams*, 552 F.3d at 938 (internal quotes omitted). Therefore, predominance is satisfied here for the UCL, FAL, and CLRA claims.

2. Breach of Express Warranty

Plaintiff also seeks certification of his express warranty claims. To establish a breach of express warranty under California law, a plaintiff must show that: “(1) the seller’s statements constitute an affirmation of fact or promise or a description of the goods; (2) the statement was part of the basis of the bargain; and (3) the warranty was breached.” *Zakaria*, 2016 WL 6662723, at *13; *see also* Cal. Com. Code § 2313(1)(a)-(b). Here, Defendant’s uniform labeling statement—“help manage blood sugar”—constitutes affirmation of fact and description of the Products that were part of the basis of the bargain. This representation appeared on every Product label and was marketed specifically to convey health benefits to consumers including blood sugar management. *See* Gudino Decl., Ex. 3.

Because every Class member was exposed to the same misleading health-related representation, whether the statement constitutes an express warranty and whether that warranty was breached are common questions susceptible to generalized proof. *See Martin*, 2017 WL 1115167, at *7 (certifying express warranty claims in a false labeling case). Importantly, because reliance is not an element of express warranty claims under California law, individual issues do not defeat predominance. *See In re Scotts EZ Seed Litig.*, 304 F.R.D. 397, 411 (S.D.N.Y. 2015) (certifying California breach of express warranty claim). Thus, whether Defendant’s health related representation constituted an express warranty and whether it was breached turns entirely on common evidence regarding what Defendant uniformly promised and failed to deliver. Defendant’s health-focused marketing campaign represents a common course of conduct that uniformly affected all Class members. This misrepresentation formed the basis of the bargain and is objectively false and misleading in ways that rendered the Products incapable of meeting the promised benefits.

3. Unjust Enrichment

Like the warranty claims, Plaintiff’s unjust enrichment claim satisfies Rule 23’s predominance requirement. Under California law, unjust enrichment (or quasi-contract) claims require common proof of Defendant’s conduct and raise the same legal issues for all Class members.

1 *See Astiana*, 291 F.R.D. at 505 (certifying unjust enrichment claim based on uniform product
 2 labeling); *see also Smith v. Keurig Green Mountain, Inc.*, 2020 WL 5630051, at *5 (N.D. Cal. Sept.
 3 21, 2020) (“[T]he Court finds the inquiry presented here—whether [Defendant] was unjustly
 4 enriched by the proposed class members’ purchase of the Products given its allegedly false
 5 representations []—raises the same legal issues as to all class members.”).

6 Plaintiff alleges that Defendant was unjustly enriched by marketing and selling the Products
 7 based on a uniform, false, and misleading representation that they “help manage blood sugar,” a
 8 claim Plaintiff relied upon in purchasing the Products. ECF No. 24 ¶¶ 157-162; Masry Decl. ¶ 3.
 9 The “help manage blood sugar” claim is false, because a product that deregulates blood sugar,
 10 exacerbates insulin resistance, and increases diabetes risk cannot “help manage blood sugar” for
 11 individuals with or without diabetes. Defendant benefitted financially from this misrepresentation
 12 by charging a price premium and driving consumer purchases through deception, while Plaintiff and
 13 the Class were deprived of the benefit of their bargain. ECF No. 24 ¶¶ 157-162. Because this unjust
 14 enrichment arose from a common course of conduct and identical labeling, the legal and factual
 15 issues are the same for all Class members. Predominance is therefore satisfied for the unjust
 16 enrichment claim.

17 **B. The Class’s Damages Model Is Capable of Measuring Class-wide Damages and**
 18 **Is Consistent with the Class’s Theory of Liability**

19 The UCL, FAL, and CLRA all authorize courts to grant restitution to private plaintiffs
 20 bringing claims under these statutes. As noted in *Colgan v. Leatherman Tool Grp., Inc.*, 135 Cal.
 21 App. 4th 663, 694 (2006), and supported by California law (Cal. Bus. & Prof. Code §§ 17203,
 22 17535; Cal. Civ. Code § 1780(a)(3)), courts have the authority to provide such restitution.

23 “Class-wide damages calculations under the UCL, FAL, and CLRA are particularly forgiving.
 24 California law ‘requires only that some reasonable basis of computation of damages be used, and
 25 the damages may be computed even if the result reached is an approximation.’” *Lambert v.*
 26 *Nutraceutical Corp.*, 870 F.3d 1170, 1183 (9th Cir. 2017) (reversed on other grounds). In false
 27 advertising cases, courts have consistently recognized the “price premium” attributable to
 28

1 misrepresentations on product labeling as a valid measure of damages. *Hadley*, 324 F. Supp. 3d at
2 1104; *Prescott*, 2022 WL 3018145, at *10.

3 Conjoint analysis is widely regarded as an effective method for isolating this price premium
4 *see e.g.*, *Hadley*, 324 F. Supp. 3d at 1107; *Lytle v. Nutramax Labs., Inc.*, 2022 WL 1600047, at *17
5 (C.D. Cal. May 6, 2022), and has been repeatedly upheld in cases involving class-wide damages
6 calculations for mislabeling under the CLRA. *Milan*, 340 F.R.D. at 601; *Bailey v. Rite Aid Corp.*,
7 338 F.R.D. 390, 411 (N.D. Cal. Apr. 28, 2021).

8 The Ninth Circuit has affirmed that “plaintiffs can measure class-wide damages using methods
9 that evaluate what a consumer would have been willing to pay for the product had it been labeled
10 accurately,” as long as these methods “reflect supply-side considerations and marketplace realities
11 that would affect product pricing.” *Zakaria v. Gerber Prods. Co.*, 755 Fed. App’x 623, 624 (9th Cir.
12 2018). In mislabeling cases, courts have accepted conjoint analyses as sufficient for accounting for
13 supply-side factors and estimating price premiums without conflicting with *Comcast*, provided that
14 (1) the survey prices reflect actual market prices from the class period, and (2) the quantities used
15 in the analysis correspond to actual quantities sold during that time. *Hadley*, 324 F. Supp. 3d at
16 1105. Additionally, courts have supported conjoint analyses that incorporate real market-clearing
17 prices and fixed supply quantities. *Fitzhenry-Russell*, 326 F.R.D. at 606.

18 To quantify class-wide damages and restitution in this case, Plaintiff will rely on a conjoint
19 analysis conducted by survey expert Steven Gaskin and economist Colin Weir. Mr. Gaskin will
20 design a survey that isolates and measures the market price premium attributable to the health-
21 related “help manage blood sugar” claim on the Products. *See* Gaskin Decl. ¶ 10. This conjoint
22 analysis will provide a scientifically valid method for determining the added value consumers placed
23 on this specific claim and will be used to calculate the amount of restitution and damages owed to
24 the Class.

25 Mr. Gaskin will follow accepted principles of conjoint survey design and will include labeling
26 attributes such as brand, health-related claims, and price. *See* Gaskin Decl. ¶¶ 12-47 (explaining
27 design framework, attribute selection, and implementation methodology). He will also account for
28 supply-side factors in both the survey and resulting market simulation, including the use of real-

1 world pricing and sales volume data to mirror actual market conditions. *Id.* ¶ 24. This ensures that
 2 the conjoint analysis properly accounts for factors influencing price beyond consumer preference
 3 alone. In *Milan*, the court specifically acknowledged the conjoint analysis developed by Plaintiff’s
 4 expert, Mr. Gaskin, as a widely accepted method for determining price premium, deeming the
 5 plaintiff’s damages model reliable and suitable for the case. 340 F.R.D. at 601. Similarly, in this
 6 case, the survey designed by Mr. Gaskin, along with the conjoint analysis he will conduct, isolates
 7 and quantifies the price premium linked to the “help manage blood sugar” claim. This analysis will
 8 be instrumental in calculating the restitution and damages owed to the Class. *See* Gaskin Decl. ¶¶
 9 12-47 (outlining the conjoint survey’s methodology, key steps, and the process for obtaining a
 10 representative sample of respondents).

11 Mr. Gaskin will be supported by Mr. Weir, a highly experienced economist with extensive
 12 expertise in calculating damages in consumer class actions. *See* Weir Decl. ¶ 8. Mr. Weir will
 13 provide economic oversight for the conjoint survey and ensure its suitability for determining
 14 damages on a class-wide basis. *Id.* ¶¶ 8, 12-14, 48-72 (detailing his role in designing and assessing
 15 the economic validity of the conjoint survey, and providing a framework for calculating damages).
 16 He will also supplement the conjoint analysis with Defendant’s business records, third-party sales
 17 data, and industry research. *Id.* ¶¶ 66-68. Mr. Weir explains that the “help manage blood sugar”
 18 claim served as a key differentiator in the marketplace, a claim that allowed Defendant to distinguish
 19 the Products from other sweeteners and to command a price premium. *Id.* ¶¶ 15-24. This
 20 representation, as Defendant’s own internal documents confirm, was central to its marketing
 21 strategy and to consumer perception of the Products’ value. *Id.*

22 Together, Mr. Gaskin and Mr. Weir will employ a well-established and reliable methodology
 23 to determine the price premium specifically attributable to Defendant’s health-related
 24 representation. *See Martinelli v. Johnson & Johnson*, No. 2: 15-cv-01733-MCE-DB, 2019 WL
 25 1429653, at *4 (E.D. Cal. Mar. 29, 2019) (declining to strike testimony of Mr. Weir where “the
 26 conjoint analysis . . . factored supply-side data into its design”); *see also Maldonado v. Apple, Inc.*,
 27 No. 3:16-cv-04067-WHO, 2021 WL 1947512, at *22 (N.D. Cal. May 14, 2021) (stating that “this
 28 damages model—a conjoint analysis using real-world supply-side data—satisfies *Daubert* and

California law.”); *In re MyFord Touch Consumer Litig.*, 291 F. Supp. 3d 936, 969-72 (N.D. Cal. 2018).

Importantly, this damages model does not require individualized inquiries. *See* Weir Decl. ¶¶ 73-78. All data necessary to conduct the conjoint analysis are common to the Class and derived from shared sources. *Id.* ¶ 36. Once the price premium attributable to the “help manage blood sugar” claim is determined, that value can be multiplied by the number of units purchased by each Class member to calculate individual and total damages. *Id.* ¶¶ 69-72; *see Zakaria*, 2016 WL 6662723, at *16. This methodology ties directly to Plaintiff’s theory of liability, and the model is both legally sufficient and capable of measuring damages on a class-wide basis. Accordingly, this further supports a finding of predominance under Rule 23(b)(3).

C. Superiority

Whether “a class action is superior . . . for fairly and efficiently adjudicating the controversy” depends on “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3). All four factors favor certification here.

Superiority is satisfied here. The Products are relatively inexpensive, and Class members thus have no interest in controlling individual actions. *Tait*, 289 F.R.D. at 486 (Superiority “is met ‘[w]here recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis.’”) (quotation omitted). Plaintiff’s counsel is also unaware of any other related litigation. Gudino Decl. ¶ 6. Finally, this case focuses on Defendant’s uniform labeling practices, not every consumer’s interaction. This minimizes any manageability concerns, which in any event cannot defeat class certification where, as here, “no realistic alternative exists.” *See Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234-35 (9th Cir. 1996). Thus, a class action is the superior method.

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VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court certify the proposed Class, designate Plaintiff as Class representatives, appoint Clarkson Law Firm, P.C. as Class Counsel, and deny Defendant's motion in its entirety.

Dated: August 12, 2025

CLARKSON LAW FIRM, P.C.

By: /s/ Alan Gudino

Shireen M. Clarkson

Bahar Sodaify

Alan Gudino

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